

APR 15 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 92-309
)	
LOCAL TELEVISION)	File No. BPCT-911106KF
ASSOCIATES, INC)	
)	
CHARLES FITZGERALD)	File No. BPCT-920114KF
)	
WEBBER/MOORE BROADCASTING)	File No. BPCT-920114KG
COMPANY LIMITED PARTNERSHIP)	
)	
For Construction Permit for a)	
New Commercial Television)	
Station on Channel 35 at)	
Jacksonville, North Carolina)	

To: Administrative Law Judge
Joseph Chachkin

**MASS MEDIA BUREAU'S COMMENTS ON
SUPPLEMENT TO PETITION FOR LEAVE TO AMEND AND
REQUEST FOR AUTHORITY FOR SATELLITE OPERATION**

1. On February 1, 1993, Local Television Associates, Inc. (LTA), Charles Fitzgerald (Fitzgerald) and Webber/Moore Broadcasting Company Limited Partnership (Webber/Moore) filed a joint motion for approval of settlement. Pursuant to the terms of the settlement, the applications of Fitzgerald and Webber/Moore would be dismissed and the new Jacksonville station would be operated as a satellite of LTA's station WFXI(TV), Moorehead City, North Carolina. On February 1, 1993, LTA also filed a petition for leave to amend and request for authority for satellite operation. On February 19, 1993, the Mass Media Bureau filed comments supporting, inter alia, a grant of the joint motion and use of the new Jacksonville station as a satellite of WFXI(TV). At the March 12, 1993, prehearing conference, the

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Presiding Judge, citing, inter alia, KMTR, Inc., 7 FCC Rcd 1025 (1992), stated that he was unwilling to approve use of the new Jacksonville station as a satellite operation absent an economic showing justifying a satellite operation. LTA expressed its willingness to provide such a showing and the Presiding Judge granted LTA an opportunity to do so. On April 6, 1993, LTA filed a supplement to its petition for leave to amend its application and request for authority for satellite operation. The Bureau hereby offers its comments on LTA's supplement.¹

2. In our comments supporting WFXI(TV)'s operation as a satellite, the Bureau noted that the Commission's Satellite Policy Statement, 6 FCC Rcd 4212, 4213-14 (1991), states that applicants for television satellite status may qualify for a presumption that satellite operation is in the public interest upon a "showing that: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station." In KMTR, the Commission, after citing the test set forth in its Satellite Policy Statement, stated that "[i]n the case of applicants for a new station seeking satellite authorization, an economic showing, such as a history of television station failures in the

¹ On April 6, 1993, Webber/Moore filed comments related to LTA's proposed satellite operation. Webber/Moore's comments will be considered herein.

market or other information indicating that a full-service station is not likely to survive in that market, should be

submitted to the FCC by the end of 1985.

of its of its proposed satellite operation is in the public interest. K2 Radio, Limited Partnership, 8 FCC Rcd 594 (1993).

4. In any case, LTA has now submitted supplemental economic information which, in the Bureau's opinion, confirms that LTA is entitled to that presumption. Specifically, LTA provides a study by Harrison, Bond and Pecaro, a consulting firm specializing in financial and economic analysis for the broadcasting industry. The firm studied the new station's audience and advertising potential, the economic strength (or lack thereof) of the Greenville-New Bern-Washington market and the experience of other full-service stations in similarly sized markets. Based on an analysis of these factors, the study concludes that, "there is absolutely no reasonable likelihood that Channel 35 will be able to sustain itself financially as a stand alone, full-service station." Exhibit A, p. 3, to LTA's supplement.

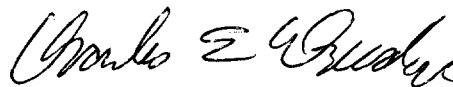
5. At the prehearing conference the Presiding Judge also asked the parties to provide an explanation as to what changes had taken place since they filed their applications which would cause them to abandon their proposal to operate the Jacksonville station as a full-service television station. In response to this request, LTA provides a "Declaration" by its President, John W. Gainey, III, in which he explains that if LTA received a grant of channel 35, it expected to transfer WXFI(TV)'s operations to

channel 35 and return WFXI(TV)'s license to the Commission for cancellation. Thus, although LTA intended channel 35 to be a full service television station, LTA did not intend to bring a new service into the market which would compete with WFXI(TV). In separately filed comments, Webber/Moore provides a "Declaration" by its general partner, Spurgeon W. Webber, III. According to Webber, after filing his application for Jacksonville, he further investigated the potential for a "stand-alone" television station and determined that, in light of the deteriorating economy, such a station's prospects were not good. He also learned that several other stations had been authorized for the area, but had never been built. Based on these considerations, when Webber/Moore was given an opportunity to dismiss its application in return for reimbursement of a portion of its expenses, it took it. A "Declaration" by Charles Fitzgerald, citing considerations similar to Webber's, was filed as Exhibit B to the supplement to joint request for approval of settlement agreement, filed by LTA and Fitzgerald on April 6, 1993.² In the Bureau's opinion, the three "Declarations" provide an adequate explanation for the decision by LTA, Webber/Moore and Fitzgerald not to pursue their applications for a full-service television station.

² The Bureau is simultaneously filing separate comments on the parties' supplement.

7. In sum, the Bureau continues to support a grant of LTA's application and acceptance of its amendment to specify operation of the new Jacksonville station as a satellite of WFXI (TV).

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Charles E. Dziedzic
Chief, Hearing Branch



Robert A. Zauner
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554
(202) 632-6402

April 15, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 15th day of April 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments on Supplement to Petition for Leave to Amend and Request for Authority for Satellite Operation"** to:

Dennis Begley, Esq.
Reddy, Begley & Martin
1001 22nd Street, NW
Washington D.C. 20037

David D. Oxenford, Esq.
Fisher, Wayland, Cooper
& Leader
1255 23rd Street, NW
Suite 800
Washington, D.C. 20037

Gregg P. Skall, Esq.
Pepper & Corazzini
1776 K Street, NW
Suite 200
Washington, D.C. 20006

Federal Aviation Administration
800 Independence Ave., S.W.
Washington, D.C. 20024

Michelle C. Mebane
Michelle C. Mebane